

Sentencing Council meeting:
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Lead Council member:
Lead official:

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SC(22)MAY06 – Terrorism
Maura McGowan
Ruth Pope
ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 From 20 October 2021 to 11 January 2022, the Council consulted on revisions to terrorism guidelines brought in by the Counter Terrorism and Sentencing Act 2021. At the April meeting the Council considered the responses relating to those legislative changes.

1.2 The consultation also covered changes to the Preparation of terrorist acts guideline to ensure that judges approach cases involving undercover police or security services, in a consistent manner.

1.3 At this meeting the Council will be asked to consider the remaining issues arising from the consultation and it is hoped that the guidelines can be signed off for publication in July to come into force in October 2022.

2 RECOMMENDATION

2.1 It is recommended that the Council:

- agrees changes to the guidance on the approach to cases involving undercover police or security services in the Preparation of terrorist acts, and Explosive substances (terrorism only) guidelines
- agrees that life sentence minimum terms included in the Preparation of terrorist acts, and Explosive substances (terrorism only) guidelines should remain unchanged
- considers whether any changes should be made to terrorism sentencing guidelines regarding sentencing offenders aged under 18
- considers whether changes should be made to the harm assessment in the preparation of terrorist acts guideline and/or explosive substances guideline
- considers whether to add an aggravating factor relating to explosive precursors and/or planning in the preparation of terrorist acts guideline and/or explosive substances guideline
- signs off the guidelines for publication in July

3 CONSIDERATION

Background

3.1 There are nine terrorism guidelines which came into force on 27 April 2018:

- Preparation of Terrorist Acts (Terrorism Act 2006, section 5)
- Explosive Substances (Terrorism Only) (Explosive Substances Act 1883, section 2 and section 3)
- Encouragement of Terrorism (Terrorism Act 2006, sections 1 and 2)
- Proscribed Organisations – Membership (Terrorism Act 2000, section 11)
- Proscribed Organisations – Support (Terrorism Act 2000, section 12)
- Funding Terrorism (Terrorism Act 2000, sections 15 - 18)
- Failure to Disclose Information about Acts (Terrorism Act 2000, section 38B)
- Possession for Terrorist Purposes (Terrorism Act 2000, section 57)
- Collection of Terrorist Information (Terrorism Act 2000, section 58)

3.2 In October 2019, the Council consulted on amendments to some of these guidelines to reflect changes to terrorism legislation in the Counter-Terrorism and Border Security Act 2019 new legislation.

3.3 The Council considered the responses to the consultation and drafted some further changes in light of these but paused work because further terrorism legislation was planned.

3.4 The Council consulted on further changes resulting from the Counter-Terrorism and Sentencing Act 2021, which was given Royal Assent on 29 April 2021.

3.5 The 2019 revised guidelines will be published alongside the revisions made under the most recent consultation process, and the accompanying consultation response document will incorporate both the 2019 changes and the changes under discussion today.

Notes for culpability and harm in the Preparation of terrorist acts, and Explosive substances (terrorism only) guidelines

3.6 The existing Preparation of terrorist acts guideline can be seen [here](#) and the draft consulted on can be found [here](#).

3.7 Following the approach taken in some relevant sexual offences guidelines which set out the approach the courts should take when sentencing cases, where sexual activity with a child has been incited but ultimately did not take place or the child did not exist, the Council reflected that similar scenarios arise when sentencing some terrorist cases. In a terrorist case there are two likely scenarios; one where the law enforcement authorities have the offender under surveillance and would step in before the terrorist act could be carried out; and secondly where a law enforcement authority poses as a terrorist jointly involved in the terrorist activity who takes steps to ensure the terrorist activity does not go ahead (for

example they may provide a fake explosive device, or intervene before the activity goes ahead).

3.8 Such scenarios present difficulties for judges in assessing the likelihood of harm. They may also present difficulties when assessing culpability, as many of the factors within the preparation guideline relate to how far preparations were advanced to the extent that the activity was likely to have been carried out.

3.9 A number of cases have come before the courts involving these types of scenarios and the Council considered that guidance was necessary to assist judges to sentence these cases in a consistent manner. The Council consulted the following additional text, to appear at Step 1 of the guideline before the culpability and harm factors:

Notes for culpability and harm

In some cases, Law Enforcement Authorities (LEA) may be involved, either posing as terrorists jointly involved in the preparations for terrorist activity, or in keeping the offender under surveillance. Their involvement is likely to ensure that the terrorist activity could never be successfully completed. Irrespective of this, the court should approach the assessment of the offender's culpability and harm as follows:

Culpability

Where an undercover LEA is involved in the preparations for the terrorist activity, the culpability of the offender is not affected by the LEA's involvement. Culpability is to be assessed as if the LEA was a genuine conspirator.

Where the LEA is surveilling the offender and prevents the offender from proceeding further, this should be treated as apprehension of the offender.

Harm

In any case that involves LEA, the court should identify the category of harm on the basis of the harm that the offender intended and the viability of the plan, and then apply a downward adjustment at step two.

The extent of this adjustment will be specific to the facts of the case. In cases where, but for the LEA involvement, the offender would have carried out the intended terrorist act, a small reduction within the category range will usually be appropriate.

Where, for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be that a more severe sentence is imposed where very serious terrorist activity was intended but did not take place than would be imposed where relatively less serious terrorist activity did take place.

3.10 Professor Emeritus Clive Walker from the University of Leeds considered that the proposed guidance was inadequate:

The problem is that the current formulation has a myopic focus on the offender and fails to take account of other circumstances, especially the role of state agents. To

see this purely through the prism of culpability and harm on the part of the offender is too narrow, especially as the draft guideline as to 'culpability' effectively dismisses LEA involvement as a relevant factor at all. Furthermore, the proposal with relevance to 'harm' includes the idea that any mitigation depends purely on timing and again ignores the nature of the involvement of the LEA.

Above all, and as a straightforward consideration which might be reflected upon for elaboration in the guidance, the other circumstances should include the ethical consideration of whether there has been compliance with the rules and regulations about Covert Human Intelligence Sources. The relevant code has now been modified and clarified by the Covert Human Intelligence Sources (Criminal Conduct) Act 2021, which, *inter alia*, emphasises the special protection of children/vulnerable adults (ss.2, 3) and requires notification to a judicial commissioner so as to ensure some independent audit (s.6). The Act has been followed up by extensive regulations in the *Covert Human Intelligence Sources: Revised Code of Practice* (Home Office, 2021) which sets out guidance as to recruitment, authorisations, criminal conduct, management, record keeping, safeguards, and complaints. One might predict that these rules will become much cited in litigation involving undercover activities, with disclosure and the extent of innovation and coercive influence will remain significant issues. The *Consultation Paper*, pp.22, 23 fails to link any of these issues might be relevant to the ethics of sentencing.

The wider perspective to be taken into account relates to the ends of criminal justice which surely should be served by sentencing. In this way, the behaviour of the LEAs remains of relevance even though the condemnation of the offender is the prime issue. Account should be taken of the common category of "probabilistic offenders" who will in the future commit the offense outside an undercover operation with a probability less than one' (McAdams, R.H., 'The Political Economy of Entrapment' (2005) 96 *Journal of Criminal Law and Criminology* 107, 140). All efforts should be made to impose the rule of law and respect for human rights on undercover LEAs. The executive and legislature have made a somewhat half-hearted effort earlier this year. Now is the turn of the Sentencing Council to consider further action in line with the expressed wishes of the judiciary.

3.11 Most other respondents were generally content with the proposals. Jonathan Hall QC, the independent reviewer of terrorism legislation, agreed with the guidance but pointed out that the proposed wording would not apply to MI5 officers as MI5 is not a law enforcement authority. The CPS agreed and suggested that the guidance should apply to both law enforcement authorities and intelligence organisations.

3.12 The Criminal Bar Association (CBA), made some suggestions:

We do not disagree but we do sound a note of caution about the juxtaposition of this passage within the Definitive Guideline. At the moment at Step One the shaded box entitled Harm states that "Harm is assessed based on the type of harm risked and the likelihood of that harm being caused. When considering the likelihood of harm, the court should consider the viability of any plan". Where an LEA is involved there will now be a preceding box which will stipulate that the harm should be assessed not on the basis of the harm that was risked or that was likely to occur but on the basis of the harm the offender intended to cause and the viability of the plan. Is there a distinction between the harm intended and the harm risked? And if the viability of the

plan is relevant to the risk of harm, why is it a separate consideration to the harm intended when an LEA is involved?

It might make more sense throughout Step 1 to refer to both the harm intended (subjective) and the harm that might foreseeably have been caused (objective) as both of these matters are specifically referred to in section 63 of the Sentencing Code as being relevant to an assessment of the seriousness of the offence in addition to any harm actually caused by the offender.

Alternatively, we wonder whether the passage in respect of LEA involvement might better read “in a case that involves an LEA, the harm should be assessed in the first instance by reference to the offender’s intentions, followed by a downward adjustment at step 2 to reflect the fact that the harm did not occur. The extent of this adjustment will be specific to the facts of the case...[and so on as per the current draft]” Given the mens rea of the offence is one of intention anyway, might the box at the top of p.4 (the general harm guidance) read “Harm is assessed based on the type of harm intended and the likelihood of that harm being caused. When considering the likelihood of harm, the court should consider the viability of any plan”.

Also, the section in the new proposed box about the discount that will be available to an offender who voluntarily desists at an early stage should presumably apply whether an LEA has been involved or not. Why should the lone defend who abandons his preparations be denied the benefit of a discount when a defendant who has unwittingly allied himself with an LEA and who does likewise could receive a substantial discount?

3.13 An anonymous respondent was opposed to the idea of any downward adjustment in terrorism cases.

3.14 The proposed wording was tested in research with judges. A summary of this road testing is provided at Annex A. When sentencing a scenario involving undercover LEAs the assessment of harm was more consistent using the revised guideline compared to the existing version. Using the revised guideline, most judges assessed harm as category 1 – which was what was expected.

3.15 The judges were generally positive about the proposed wording but there were various suggestions for further explanation or examples to be provided for different levels of adjustment:

- One of these related to the degree to which the preparations were complete – this is catered for in the culpability assessment and the guidance specifically says that the involvement of the LEA does not affect the assessment of culpability.
- Another was for the significance of the LEA involvement to be a relevant factor in deciding the reduction, i.e. how well connected was the offender without LEA involvement? The guidance would indicate that this is not a relevant consideration. The guidance talks about the extent to which the attack would have gone ahead but for the LEA involvement as opposed to the extent to which the attack could not have been planned *without* LEA involvement.
- Similarly one suggested that the LEA involvement might mean that the offender was unable to pull out.

- There was a query about the reference to the ‘viability of the plan’ as to whether this meant the viability but for the fact that LEAs were involved or the viability taking into account the LEA involvement.
- There were other comments which indicated some confusion or misunderstanding of the guidance.

3.16 Taken with the comments from the CBA and other respondents a slightly modified version is proposed:

Notes for culpability and harm

In some cases, law enforcement authorities **or intelligence organisations** (LEA) may be involved, either posing as terrorists jointly involved in the preparations for terrorist activity, or in keeping the offender under surveillance. Their involvement is likely to ensure that the terrorist activity could never be successfully completed. **In such cases**, the court should approach the assessment of the offender’s culpability and harm as follows:

Culpability

Where an undercover LEA is involved in the preparations for the terrorist activity, the culpability of the offender is not affected by the LEA’s involvement. Culpability is to be assessed as if the LEA was a genuine conspirator.

Where the LEA is surveilling the offender and prevents the offender from proceeding further, this should be treated as apprehension of the offender.

Harm

In any case that involves LEA, the court should identify the category of harm on the basis of the harm that the offender intended and the viability of the plan (**disregarding the involvement of the LEA**), and then apply a downward adjustment at step two.

The extent of this adjustment will be specific to the facts of the case. In cases where, but for the fact that **a co-conspirator was an LEA or the offender was under surveillance**, the offender would have carried out the intended terrorist act, a small reduction within the category range will usually be appropriate.

Where, for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be that a more severe sentence is imposed where very serious terrorist activity was intended but did not take place than would be imposed where relatively less serious terrorist activity did take place.

3.17 There was also a suggestion from one judge that these notes should be signposted at step 2. This difficulty with that suggestion is that this guideline is already contains several notes and cross references and so any additional attempt at signposting may just clutter up the guideline.

Question 1: What changes does the Council wish to make to the guidance on LEAs?

Life sentence minimum terms included in the Preparation of terrorist acts, and Explosive substances (terrorism only) guidelines

3.18 The consultation noted that the way in which the minimum term is to be calculated when imposing a life sentence for certain terrorism, violent and sexual offences has changed to take account of changes to release provisions meaning that, for certain offences, offenders must now serve two thirds of their determinate sentence before they can be considered eligible for release, as opposed to half of their sentence. It was also noted that the Police, Crime, Sentencing and Courts Bill will prescribe the approach that judges should take in setting the minimum term.

3.19 The current Preparation of terrorist acts and Explosive substances (terrorism only) guidelines include life sentences with specified minimum terms within the sentencing table. The consultation document pointed out that in calculating appropriate life sentence minimum terms the Council did not first decide upon a notional determinate sentence and then halve it. Indeed, the Council positively chose to include life sentences on the face of the guideline rather than unrealistic lengthy determinate sentence given that, for the most serious cases, life sentences are generally inevitable. The Council put forward the view that the sentencing levels remain correct for these offences and the minimum terms in the existing sentence tables should not be amended to reflect the change to the approach that is now required when setting a life sentence minimum term for certain offences.

3.20 Aside from on anonymous respondent who stated that sentences should be increased, all those who responded to this question in the consultation agreed with the Council's proposed approach.

Question 2: Does the Council agree that these minimum terms should remain the same?

Other issues raised in response to the consultation

3.21 Professor Walker commented as follows:

Those proposed adaptations seem appropriate in accordance with the stated legislative policies which must of course be followed. It has, however, been pointed out in my earlier (2017) submissions to the Sentencing Council that its initial guidance as published in 2018 was unsatisfactory in various respects. Those still remaining defects include: its coverage in terms of offences; its faulty premises in terms of alleged seriousness or the inadequacy of contemporary judicial responses; and the failure to engage with the objectives of sentencing in regard to terrorism including in the light of prison and release regimes. The legislative policies themselves might also be criticised (and criticisms have been made by this author in Walker, C. and Cawley, O., 'De-risking the release of terrorist prisoners' [2021] Criminal Law Review 252-268), though it is recognised that the Sentencing Council has less room for manoeuvre.

3.22 No changes are proposed to address Professor Walker's criticisms which appear to be of a general nature and, to a large extent, not within the remit of the Council to address.

3.23 Paul Goldspring (Senior District Judge (Chief Magistrate) of England and Wales) stated:

Since the majority of terrorism offences committed by adults will be dealt with in the Crown Court, there is very little comment that I would wish to make on the proposed amendments to the guidelines for those offenders.

However, I feel it is important to draw the attention of the Sentencing Council to those youths who find themselves before the courts for involvement in offending under the Terrorism Acts. It is arguable that they represent both the most worrying cases and yet also those most likely to benefit from rehabilitative measures following a finding of guilt.

Whilst the proposed guidelines for adults will take all but the lowest level matters far beyond the powers of a magistrates' court, the Youth Court is likely to retain some severe cases due to the young age of the defendant having the effect of reducing the suggested sentence.

As has been previously recognised by the Senior Judiciary in the circumstances of serious sexual offending, it is generally considered more appropriate for young people to be dealt with in Youth Courts and subsequently monitored and supported by Youth Offending Teams. This letter does not seek to suggest that more cases should necessarily remain in the Youth Court but simply to pose the question whether the stark difference in sentencing regimes between it and the Crown Court is desirable in these most sensitive of cases?

As an example, there was recently an application by the Secretary of State in relation to a youth who was due to be released from a Young Offenders' Institute for the "training" portion of the Detention and Training Order imposed for terrorism offences. The application was to extend the period of detention on the basis that further work was required before the YOT could be satisfied that the risk posed to the community was reduced. In this case, the youth had been detained at a YOI as a radical supporter of far-right wing organisations but had become indoctrinated to Islamic extremism whilst incarcerated.

It is perhaps a matter for debate whether the resources and programmes available to the YOT or the Probation Service are more effective in these cases. However, the youth sentencing system appears to offer a more flexible safeguard in the form of the Secretary of State's ability to apply for a longer period of detention even after sentence where appropriate.

It is appreciated that the numbers of youths involved in such offending is relatively small, but perhaps a modified guideline would be of assistance to outline the very particular factors for consideration in the sentencing exercise for those under 18?

3.24 A member of the public who responded to the consultation also raised concerns about the lack of sentencing guidelines for under 18s.

3.25 The Council does not appear to have considered producing a guideline for children and young people for terrorism offences. The volumes are very low¹ and the Council has

¹ A total of seven offenders aged under 18 were sentenced for terrorism offences in the five years from 2016 to 2020. Four of these were for the s5 preparation of terrorist acts offence.

only produced offence specific guidelines for sentencing children and young people for higher volume offences that have particular relevance to offenders under 18. The overarching [Sentencing Children and Young People](#) guideline would apply in the absence of an offence specific guideline. This states (at 6.46):

When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age.

3.26 Currently the terrorism guidelines (with the exception of the Explosive substances guideline) all state in the header: ‘This guideline applies only to offenders aged 18 and older’. This is not the standard approach across most guidelines. In general this information is included in the ‘Applicability’ drop down. Views are sought as to whether the terrorism guidelines should continue with the non-standard approach.

Question 3: Should any changes be made to the terrorism guidelines regarding sentencing offenders aged under 18?

3.27 The Government response made the following suggestions:

Regarding the explosives guidelines we would encourage the Council to consider adding an aggravating factor to the revised guidelines that would capture offenders who deliberately take steps to circumvent the legal controls in place for the purchasing of explosive precursors. We would also ask the Council to consider whether the guidelines adequately capture the harms caused by offences involving significant damage to infrastructure and recommend that the risks of substantial impact upon civic infrastructure, and widespread or serious damage to property or economic interests are designated a category 2 harm. Category 2 harm does not put these infrastructure target attacks above loss of life, but recognises the significant long lasting impact of these attacks on the economy and society.

3.28 The harm factors are:

Harm

Harm is assessed based on the type of harm risked and the likelihood of that harm being caused. When considering the likelihood of harm, the court should consider the viability of any plan.

See the notes for culpability and harm at the start of this section before proceeding

Category 1

- Multiple deaths risked and very likely to be caused

Category 2

- Multiple deaths risked but not very likely to be caused
- Any death risked and very likely to be caused

Category 3

- Any death risked but not very likely to be caused
- Risk of widespread or serious damage to property or economic interests
- Risk of a substantial impact upon civic infrastructure
- Any other cases

3.29 The consultation did not envisage any changes to the harm assessment (apart from the notes relating the LEA involvement considered above). The harm assessment was the subject of considerable discussion and several revisions before the first (2017) consultation and again post consultation before the definitive guidelines were published in 2018 – although the discussions focussed mainly on the risks of death. The suggestion made in the Government response could be relevant to cases where infrastructure was targeted in situations where deaths were not a likely direct consequence (otherwise category 2 would apply anyway). This could include cases where a warning is given so that an area is cleared of people or where a communications or power network is attacked in a remote unmanned location.

3.30 The Explosive substances guideline can apply in cases where an explosion takes place and actual harm to property occurs (the section 2 offence). As the guideline currently stands, unless the explosion was very likely to cause death, even if the actual damage was extensive, harm category 3 would apply.

3.31 In the harm assessment, the level of harm associated with risk of death depends upon the number of deaths risked and the likelihood of that risk eventuating. Whereas risk of property and infrastructure damage is considered at just one level regardless of the extent of the damage (all other cases, are also at category 3) or the likelihood of it being caused. If the Council agreed that risk of substantial damage to property or infrastructure should be included in category 3 harm, presumably this would apply where it was very likely to be caused.

3.32 A difficulty with making a change of this nature at this stage is that it has not been consulted on.

3.33 An aggravating factor of ‘Steps take to circumvent the legal controls on the purchasing of explosive precursors’ could be added to the relevant guidelines. This factor could conceivably be relevant to offenders at culpability A, B or C. Currently the aggravating factors which are specific to these offences are:

- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection
- Offender attempted to disguise their identity to prevent detection
- Indoctrinated or encouraged others

3.34 Under the Poisons Act, it is an offence to purchase a regulated explosive precursor (i.e. chemicals which can be used to make an explosives) without a Home Office issued explosives precursors and poisons licence, additionally, there is an obligation on retailers to report any suspicious purchases or attempted purchases. The Home Office notes that there have been cases where explosive precursors used were purchased from overseas. There have also been cases where the offender has paid in cash for substances making it very hard for the retailer to provide any details of that transaction, or where several different bank accounts have been used to make purchases. The assumption is that the reason for doing such things is to reduce the likelihood of detection via the legal controls in place. This in turn shows a degree of planning and sophistication that could justify an increase in sentence.

3.35 If the Council felt that the current factors do not adequately capture such behaviour, an additional aggravating factor could be added. It may be preferable to focus on the planning and attempts to avoid detection, so that the factor would apply in other circumstances, thereby future-proofing the guideline. A suggested factor is:

- Offender used sophisticated methods to avoid detection (such as taking steps to circumvent the legal controls in place for the purchasing of explosive precursors).

Question 4: Does the Council wish to wish to make changes to the harm assessment in the preparation of terrorist acts guideline and/or explosive substances guideline?

Question 5: Does the Council wish to add an aggravating factor relating to explosive precursors and/or planning in the preparation of terrorist acts guideline and/or explosive substances guideline?

3.36 Annex B contains the following guidelines incorporating the changes agreed at last month’s meeting (Insertions are shown in red and deletions are ~~struck through~~):

- Preparation of Terrorist Acts (Terrorism Act 2006, section 5)
- Explosive Substances (Terrorism Only) (Explosive Substances Act 1883, section 2 and section 3)
- Proscribed Organisations – Membership (Terrorism Act 2000, section 11)
- Proscribed Organisations – Support (Terrorism Act 2000, section 12)

3.37 Once any changes agreed at this meeting are made, the revised guidelines will be published in July to come into effect on 1 October.

3.38 The revisions to the following guidelines (at Annex C) will also be published and come into effect at the same time:

- Encouragement of Terrorism (Terrorism Act 2006, sections 1 and 2)
- Funding Terrorism (Terrorism Act 2000, sections 15 - 18)
- Failure to Disclose Information about Acts (Terrorism Act 2000, section 38B)
- Collection of Terrorist Information (Terrorism Act 2000, section 58)

3.39 There are a few points of detail across all the guidelines on which guidance is sought:

- The issue mentioned at 3.26 above relating to the applicability of the guideline also applies to the guidelines at Annex C
- The wording of the mitigating factor 'Age and/or lack of maturity' – should it be qualified by the wording 'where it affects the responsibility of the offender'?
- The wording of the step 'Required special sentence for certain offenders of particular concern': should this refer to life, serious terrorism sentences and extended sentences in all guidelines regardless of whether they are available for the particular offence on the basis that it may be sentenced alongside other offences for which those disposals are available?

Question 6: Subject to any changes agreed at this meeting is the Council content to publish the guidelines at Annex B and C?

4 IMPACT AND RISKS

4.1 The resource assessment will be updated in the light of any changes agreed at this meeting and circulated to Council members alongside the response to consultation document for approval ahead of the publication of the guidelines.

Terrorism road testing: guidance on law enforcement agent (LEA) involvement

Introduction

In June and July 2021, the Council agreed amendments, consulted on October 2021 to January 2022, to the [Preparation of terrorist acts](#) (Terrorism Act 2006, s.5) guideline to reflect Government changes introduced in the [Counter-Terrorism and Sentencing Act 2021](#):

- Adding ‘**Notes for culpability and harm**’ on how to approach cases where, due to the involvement of undercover LEAs, there is no/minimal likelihood of the terrorist act being committed, including whether to apply a downward adjustment on the basis of the harm intended and viability of the plan;
- Amending the sentence in C1 in the sentencing table to ensure the minimum term range does not go below 14 years; and,
- Adding ‘**Step 3 – Minimum Terms, Serious Terrorism Sentences and exceptional circumstances**’, where some sentences may need adjustment if the criteria for a ‘serious terrorism sentence’ are met, or if a life sentence of below 14 years is imposed in a ‘serious terrorism case’, as the act brought in new statutory minimum sentences, which increased previous minimum sentences to 14 years.

Methodology

This paper focuses on the scenario related specifically to the addition of the new guidance LEA involvement; the April Council paper covered the other aspects.

To examine how the proposed guidance is interpreted and impacts on sentencing practice, small-scale qualitative road testing took place September to October 2021, with 11 judges ticketed for terrorism offences, identified through the Research Pool and a sample of 2019 terrorism case transcripts. Two hypothetical scenarios were developed, each testing different elements of the draft amended guideline. One week prior to interview, participants were sent the existing and draft amended guidelines, with amendments clearly flagged on the draft amended one, and both scenarios, to allow judges time to consider them, due to the complexity of terrorism cases and the likelihood they would not have sentenced a terrorism case since the law changed on 29th June 2021.

Testing the new notes on culpability and harm – guidance on LEA involvement

The scenario designed to test the new guidance is below:

The 32-year-old male offender was convicted at trial of one count contrary to Preparation of Terrorist Acts, s.5(1) (a) of the Terrorism Act 2006. The offender was arrested walking along Victoria Street carrying a holdall bag containing (as he believed) a rucksack which had been fitted with a pressure cooker improvised explosive device, a jacket which had been modified as an explosive suicide vest, a pepper spray and a set of gloves. His plan had involved blowing up the security gates of the Houses of Parliament; killing or disabling police officers posted at the gates by explosion or knife wounds (or incapacitating them with pepper spray); and then entering Parliament and making a determined attack with a knife and explosives on those inside, with the ultimate target being the Prime Minister.

The offender had three contacts who claimed to be members of IS. He worked with them to plan the attack, gathering advice, assistance and equipment.

The offender provided a rucksack and a jacket to his IS contacts so that they could be fitted with explosive devices. The contacts had also provided him with detailed instructions on how to detonate the devices. The offender had also made a reconnaissance of the area surrounding parliament and discussed and refined his plan of attack with his contacts.

Unbeknown to the offender, the devices were inert and simply made to look real and his 3 contacts, that he believed to be members of IS, were law enforcement agents (“LEAs”) all working for the security services.

This was deemed an A1 case: starting point life imprisonment, minimum term 35 years, range 30-40 years. Key findings are summarised below, followed by the results table.

Key findings

- There was little difference between sentencing **culpability** across both guidelines.
- A mixed picture was found when sentencing **harm** using the existing guideline, while a more consistent approach was found when using the draft amended guideline.
- A range of **starting points** were elicited with both guidelines; comparing across the guidelines, five judges selected higher starting points using the draft amended guideline compared to the existing guideline, while six selected the same.
- Using the draft amended guideline, the majority of judges made a small **downward adjustment** on the basis of harm intended and viability of the plan due to LEA involvement.
- Six judges noted **aggravating factors** across both guidelines; five stated none applied.
- The majority of judges said there were no **mitigating factors** under either guideline.
- A range of **final sentences** were given: the majority were life sentences across both guidelines, with minimum terms from 12 years (one judge), through to 40 years (one judge) with the existing guideline, and 14 years (one judge) through to one judge stating a whole life term ‘*as the case is so exceptional*’, with the draft amended guideline.
- When using the existing guideline, judges generally felt that their final sentence was ‘*high but fair*’, while with the draft amended guideline, all judges felt their particular sentence was ‘*about right*’.
- The judges were generally positive about the **new notes on culpability and harm**, noting they were very ‘*helpful*’, and ‘*straightforward*’.
- **Possible clarifications** were also suggested, particularly around downward adjustment, such as: providing examples for different reductions; reference to the significance and timing of LEA involvement; and around viability of the plan, including wording being ‘*ambiguous*’. Other comments related to specific aspects of the wording, such as: ‘*what does ‘but for apprehension’ mean*’; a request for clearer examples under harm; and signposting the LEA involvement notes at step 2.

Table 1: Summary of results for scenario 1 – new notes on culpability and harm, including guidance on LEA involvement

	Guideline	Culp	Factors	Harm	Factors	Starting Point (SP)	Downward adjustment?	Aggravating factors	Mitigating factors	Final sentence
1	Existing	B	<ul style="list-style-type: none"> • Significant role • Preparations complete/close • Act likely to be carried out 	2	<ul style="list-style-type: none"> • Multiple deaths risked, not very likely 	Life, 15 years	N/A	• <i>Attack on police/parliament</i> ¹²	None	Life, 17 years
	Amended	B	As above	1	<ul style="list-style-type: none"> • Multiple deaths risked, very likely 	Life, 25 years	• Down to 20 years	As above	None	Life, 22 years
2	Existing	A	<ul style="list-style-type: none"> • Acting alone/leading role • Preparations complete/close • Act likely to be carried out 	2	<ul style="list-style-type: none"> • Multiple deaths risked, not very likely 	Life, 25 years	N/A	• <i>Attack on Government</i>	None	Life, 30 years
	Amended	A	As above	1	<ul style="list-style-type: none"> • Multiple deaths risked, very likely 	Life, 35 years	• Small reduction from SP	• <i>Attack on Government</i>	None	Life, 40 years
3	Existing	A	<ul style="list-style-type: none"> • Acting alone/leading role • <i>Substantial involvement</i> 	1	<ul style="list-style-type: none"> • Multiple deaths risked • <i>Harm intended</i> 	Life, 35 years	N/A	None	None	Life, 32 years
	Amended	A	<ul style="list-style-type: none"> • Leading role • Preparations complete/close 	1	<ul style="list-style-type: none"> • Multiple deaths risked, very likely 	Life, 35 years	• Small reduction from SP	None	None	Life, 33 years
4	Existing	A	<ul style="list-style-type: none"> • Acting alone • <i>Possessed all needed to carry out act and was going to do it</i> 	1	<ul style="list-style-type: none"> • Multiple deaths likely 	Life, 36 ³ years	N/A	<ul style="list-style-type: none"> • <i>Reconnaissance</i> • <i>Planning</i> • <i>Conspiracy</i> 	None	Life, 36 years
	Amended	A	Same as original guideline	1	Same as existing guideline	Life, 36 years	• No	As above	None	Life, 36 years

¹ Factors in italics are not listed in the guideline. Responses relating to the draft amended guideline are in grey for ease.

² Attack on police/parliament/Government is in line with 'Preparation was with a view to engage in combat with UK armed forces' from both the guidelines.

³ Starting point in both guidelines is 35, however the Judge stated they would start at 36 years.

	Guideline	Culp	Factors	Harm	Factors	Starting Point (SP)	Downward adjustment?	Aggravating factors	Mitigating factors	Final sentence
5	Existing	A	<ul style="list-style-type: none"> Acting alone/leading role 	1	<ul style="list-style-type: none"> Multiple deaths risked, very likely 	Life, 35 years	N/A	None	None	Life, 30 years
	Amended	A	As above	1	As above	Life, 35 years	<ul style="list-style-type: none"> Down to 33 years 	None	None	Life, 33 years
6	Existing	A	<ul style="list-style-type: none"> Preparations complete/close <i>Kitted out to commit attack</i> 	3	<ul style="list-style-type: none"> <i>Neutralised bar spray/knife so not 1</i> 	16-20 years	N/A	<ul style="list-style-type: none"> Indoctrinated Encrypted info 	<ul style="list-style-type: none"> No relevant convictions 	20 years + 10 year extension
	Amended	A	<ul style="list-style-type: none"> Preparations complete/close Act likely to be carried out 	1	<ul style="list-style-type: none"> Multiple deaths risked, very likely 	Life, 35 years	<ul style="list-style-type: none"> Down to 30 if not well connected 	None	As above	Life, 28/29 to 33/34 ⁴
7	Existing	B	<ul style="list-style-type: none"> Leading role Act likely to be carried out 	2	<ul style="list-style-type: none"> Multiple deaths risked, not very likely <i>Knife</i> 	Life, 15 years	N/A	None	<ul style="list-style-type: none"> LEA involvement 	Life, 12 years
	Amended	B	<ul style="list-style-type: none"> Leading role Preparations advanced Engaging with others 	2	<ul style="list-style-type: none"> Multiple deaths risked, not very likely 	Life, 15 years	<ul style="list-style-type: none"> Small reduction from SP 	None	None	Life, 14 years
8	Existing	A	<ul style="list-style-type: none"> Acting alone/leading role 	1	<ul style="list-style-type: none"> Multiple deaths 	Life, 35 years	N/A	<ul style="list-style-type: none"> Hostility Communication with extremists <i>High profile attack on Parliament</i> 	<ul style="list-style-type: none"> No previous convictions 	Life, 40 years
	Amended	A	As above	1	As above	Life, 35 years	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> Extremist material Communication with extremists 	None	Whole life term

⁴ Stated two ranges depending on how well connected the defendant was in their own right (i.e. aside from LEA involvement); it would be lower if not well connected.

	Guideline	Culp	Factors	Harm	Factors	Starting Point (SP)	Downward adjustment?	Aggravating factors	Mitigating factors	Final sentence
9	Existing	A	<ul style="list-style-type: none"> Acting alone 	2	<ul style="list-style-type: none"> Multiple deaths, not very likely 	Life, 25 years	N/A	None	None	Life, 25 years
	Amended	A	<ul style="list-style-type: none"> Acting alone 	1	<ul style="list-style-type: none"> Multiple deaths <i>Treat as a genuine device</i> <i>Blowing up parliament etc</i> 	Life, 35 years	<ul style="list-style-type: none"> 30-35 years 	None	None	Life, 30-35 years, 32/33
10	Existing	A	<ul style="list-style-type: none"> Acting alone/ leading role 	1	<ul style="list-style-type: none"> Multiple deaths risked <i>Knife</i> <i>Determined to act</i> 	Life, 35 years, increase to 36/37	N/A	None	None	Life, 32 years
	Amended	A	<ul style="list-style-type: none"> Acting alone/ leading role, Preparations complete/close 	1	<ul style="list-style-type: none"> <i>Explosives</i> <i>Knife</i> <i>Attack on police etc</i> 	Life, 35 years, increase to 36/37	<ul style="list-style-type: none"> Small reduction from SP 	None	None	Life, 32 years
11	Existing	B	<ul style="list-style-type: none"> Significant role Preparations complete/close Act likely to be carried out 	2	<ul style="list-style-type: none"> Multiple deaths risked, not very likely 	Life, 15 years	N/A	<ul style="list-style-type: none"> Communicating with terrorists 	None	Life, 15-20 years
	Amended	A	<ul style="list-style-type: none"> Acting alone/ leading role Preparations complete/close 	1	<ul style="list-style-type: none"> Multiple deaths risked <i>Knife</i> 	Life, 40 ⁵ years	<ul style="list-style-type: none"> Small reduction to 35 	<ul style="list-style-type: none"> Communicating with terrorists 	None	Life, 35 years

⁵ Starting point is 35, however the Judge stated they would start at 40 years as it was an exceptional case.

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Explosive substances (terrorism only)

Causing explosion likely to endanger life or property - Explosive Substances Act 1883 (section 2)

Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property - Explosive Substances Act 1883 (section 3)

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

These are [Schedule 19](#) offences for the purposes of sections [274](#) and [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

For offences committed on or after 13 April 2015, these are offences listed in [Part 1 of Schedule 15](#) for the purposes of sections [273](#) and [283](#) (life sentence for second listed offence) of the Sentencing Code.

These are specified offences for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

This is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

For offences committed on or after 29 June 2021, this is a serious terrorism offence listed in [Part 2 of Schedule 17A](#) for the purposes of sections [268B](#) and [282B](#) (serious terrorism sentence), [section 323](#) (minimum term order: other life sentences), and section [268\(4\)\(b\)\(iii\)](#) and [281\(4\)\(b\)\(iii\)](#) (increase in extension period for serious terrorism offenders) of the Sentencing Code.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Applicability [drop down]

Step 1 – Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Notes for culpability and harm

In some cases, Law Enforcement Authorities (LEA) may be involved, either posing as terrorists jointly involved in the preparations for terrorist activity, or in keeping the offender under surveillance. Their involvement is likely to ensure that the terrorist activity could never be successfully completed. Irrespective of this, the court should approach the assessment of the offender's culpability and harm as follows:

Culpability

Where an undercover LEA is involved in the preparations for the terrorist activity, the culpability of the offender is not affected by the LEA's involvement. Culpability is to be assessed as if the LEA was a genuine conspirator.

Where the LEA is surveilling the offender and prevents the offender from proceeding further, this should be treated as apprehension of the offender.

Harm

In any case that involves LEA, the court should identify the category of harm on the basis of the harm that the offender intended and the viability of the plan, and then apply a downward adjustment at step two.

The extent of this adjustment will be specific to the facts of the case. In cases where, but for the LEA involvement, the offender would have carried out the intended terrorist act, a small reduction within the category range will usually be appropriate.

Where, for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be that a more severe sentence is imposed where very serious terrorist activity was intended but did not take place than would be imposed where relatively less serious terrorist activity did take place.

Culpability demonstrated by one or more of the following:

A

- Offender caused an explosion or used, developed or was in possession of a viable explosive device
- **Acting alone**, or in a **leading** role, in terrorist activity involving explosives, where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out

B

- Offender took significant steps towards creating an explosion or developing or obtaining a viable explosive device
- **Acting alone**, or in a **leading** role, in terrorist activity involving explosives where preparations were advanced and, but for apprehension, the activity was likely to have been carried out
- **Significant** role in terrorist activity involving explosives where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out

C

- **Leading** role in terrorist activity involving explosives where preparations were not far advanced
- **Significant** role in terrorist activity involving explosives where preparations were advanced and, but for apprehension, the activity was likely to have been carried out
- **Lesser** role in terrorist activity involving explosives where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
- Act(s) of significant assistance or encouragement of other(s) involved in causing, developing or possessing an explosive device (where not falling within A or B)

D

- Offender took very limited steps toward creating an explosion or developing or obtaining a viable explosive device
- Offender has engaged in very limited preparation of terrorist activity involving explosives
- Act(s) of lesser assistance or encouragement of other(s)
- Other cases not falling within A, B or C

Harm

Harm is assessed based on the type of harm risked and the likelihood of that harm being caused. When considering the likelihood of harm, the court should consider the viability of any plan.

See the notes for culpability and harm at the start of this section before proceeding

Category 1

- Multiple deaths risked and very likely to be caused

Category 2

- Multiple deaths risked but not very likely to be caused
- Any death risked and very likely to be caused

Category 3

- Any death risked but not very likely to be caused
- Risk of widespread or serious damage to property or economic interests
- Risk of a substantial impact upon civic infrastructure
- Any other cases

Step 2 - Starting point and category range

Having determined the category at step 1, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features.

Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in [section 308 of the Sentencing Code](#) to make the appropriate determination. (See Step 6 below).

The court must also consider the provisions set out in [s323\(3\)](#) of the Sentencing Code (minimum term order for serious terrorism offenders). (See Step 3 below).

Where the dangerousness provisions are met but a life sentence is not justified, the court must consider whether the provisions for the imposition of a serious terrorism sentence have been met, having regard to the criteria contained in [s268B](#) (adult offenders aged under 21) or [s282B](#) (offenders aged 21 and over) of the Sentencing Code. If the criteria are met, a minimum custodial sentence of 14 years applies. (see Step 3 below).

Where the dangerousness provisions are not met the court must impose a sentence in accordance with the provisions set out in sections [265](#) and [278](#) of the Sentencing Code (required special sentence for certain offenders of particular concern). (See Step 7 below).

Harm	Culpability			
	A	B	C	D
1	Starting point Life imprisonment - minimum term 35 years' custody	Starting point Life imprisonment - minimum term 25 years' custody	Starting point Life imprisonment - minimum term 15 years' custody	Starting point 15 years' custody
	Category range Life imprisonment - minimum term 30 – 40 years' custody	Category range Life imprisonment - minimum term 20 – 30 years' custody	Category range Life imprisonment - minimum term 10 – 20 years' custody*	Category range 10 – 20 years' custody*
2	Starting point Life imprisonment - minimum term 25 years' custody	Starting point Life imprisonment - minimum term 15 years' custody	Starting point 15 years' custody	Starting point 8 years' custody
	Category range Life imprisonment - minimum term 20 – 30 years' custody	Category range Life imprisonment - minimum term 10 – 20 years' custody	Category range 10 – 20 years' custody	Category range 6 – 10 years' custody
3	Starting point 16 years' custody	Starting point 12 years' custody	Starting point 8 years' custody	Starting point 4 years' custody
	Category range 12 – 20 years' custody	Category range 8 – 16 years' custody	Category range 6 – 10 years' custody	Category range 3 – 6 years' custody

* Where a Serious Terrorism Sentence is imposed, the appropriate custodial term is a minimum of 14 years unless exceptional circumstances apply. See s282C of the Sentencing Code **See Step 3 below regarding minimum terms, serious terrorism sentences and exceptional circumstances.**

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its relevance to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting)

Other aggravating factors

- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection
- Offender attempted to disguise their identity to prevent detection
- Indoctrinated or encouraged others
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offence committed ~~whilst~~ in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/or lack of maturity ~~where it affects the responsibility of the offender~~
- Sole or primary carer for dependent relatives

Step 3 – Minimum terms, serious terrorism sentences and exceptional circumstances

Life sentence minimum terms

For serious terrorism cases the life sentence minimum term must be **at least 14 years** ([section 323\(3\)](#) of the Sentencing Code) unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify a lesser period.

A “serious terrorism case” is a case where, but for the fact that the court passes a life sentence, the court would be required by section [268B\(2\)](#) or [282B\(2\)](#) of the Sentencing Code to impose a serious terrorism sentence.

The minimum term cannot be reduced below 80 per cent of 14 years for a guilty plea (see step 5 – Reduction for guilty pleas).

Serious terrorism sentence - minimum custodial sentence

Where the criteria for a serious terrorism sentence are met, as set out in [s268B](#) (adult offenders aged under 21) or [s282B](#) (offenders aged 21 and over) of the Sentencing Code, then the court must impose the serious terrorism sentence unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify not doing so.

Where a serious terrorism sentence is imposed, the appropriate custodial term is a minimum of 14 years’ custody and an extension period to be served on licence of at least 7 and no more than 25 years. (Sections [268C](#) and [282C](#) of the Sentencing Code). Where a serious terrorism sentence is imposed, the custodial term cannot be reduced below 80 per cent of 14 years for a guilty plea (see step 5 – Reduction for guilty pleas).

Exceptional circumstances

In considering whether there are exceptional circumstances that would justify not imposing the minimum term (in the case of a life sentence), or not imposing the serious terrorism sentence where the other tests are met, the court must have regard to:

- the particular circumstances of the offence **and**
- the particular circumstances of the offender.

either of which may give rise to exceptional circumstances

Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.

Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

The circumstances must truly be exceptional. Circumstances are exceptional if the imposition of the minimum term (in the case of a life sentence), or imposing the serious terrorism sentence would result in an arbitrary and disproportionate sentence.

It is important that courts adhere to the statutory requirement and do not too readily accept exceptional circumstances.

The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

The mere presence of one or more of the following should not *in itself* be regarded as exceptional:

- One or more lower culpability factors
- One or more mitigating factors
- A plea of guilty

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the minimum term (in the case of a life sentence) then the court **must impose a shorter minimum**.

If there are exceptional circumstances that justify not imposing a serious terrorism sentence, then the court must impose an alternative sentence.

Note: a guilty plea reduction applies in the normal way if a serious terrorism sentence is not imposed (see step 5 – Reduction for guilty pleas).

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 5 – Reduction for guilty plea

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in sentence for a guilty plea](#) guideline.

Where a **serious terrorism sentence** has been imposed, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than 80 per cent of the statutory minimum.

Step 6 – Dangerousness

The court should consider:

- 1) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#))
- 2) whether having regard to sections [273](#) and [283](#) of the Sentencing Code it would be appropriate to impose a life sentence.
- 3) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

Step 7 – Required special sentence for certain offenders of particular concern

Where the court does not impose a sentence of imprisonment for life, a serious terrorism sentence or an extended sentence but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

Step 8 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 9 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Crown Court Compendium](#)

Step 10 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 11 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Preparation of terrorist acts

Terrorism Act 2006, s.5

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

This is a [Schedule 19](#) offence for the purposes of sections [274](#) and [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

For offences committed on or after 3 December 2012, this is an offence listed in [Part 1 of Schedule 15](#) for the purposes of sections [273](#) and [283](#) (life sentence for second listed offence) of the Sentencing Code.

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

This is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

For offences committed on or after 29 June 2021, this is a serious terrorism offence listed in [Part 2 of Schedule 17A](#) for the purposes of sections [268B](#) and [282B](#) (serious terrorism sentence), [section 323](#) (minimum term order: other life sentences), and section [268\(4\)\(b\)\(iii\)](#) and [281\(4\)\(b\)\(iii\)](#) (increase in extension period for serious terrorism offenders) of the Sentencing Code.

~~This guideline applies only to offenders aged 18 and older~~

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Applicability [drop down]

Step 1 – Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Notes for culpability and harm

In some cases, Law Enforcement Authorities (LEA) may be involved, either posing as terrorists jointly involved in the preparations for terrorist activity, or in keeping the offender under surveillance. Their involvement is likely to ensure that the terrorist activity could never be successfully completed. Irrespective of this, the court should approach the assessment of the offender's culpability and harm as follows:

Culpability

Where an undercover LEA is involved in the preparations for the terrorist activity, the culpability of the offender is not affected by the LEA's involvement. Culpability is to be assessed as if the LEA was a genuine conspirator.

Where the LEA is surveilling the offender and prevents the offender from proceeding further, this should be treated as apprehension of the offender.

Harm

In any case that involves LEA, the court should identify the category of harm on the basis of the harm that the offender intended and the viability of the plan, and then apply a downward adjustment at step two.

The extent of this adjustment will be specific to the facts of the case. In cases where, but for the LEA involvement, the offender would have carried out the intended terrorist act, a small reduction within the category range will usually be appropriate.

Where, for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be that a more severe sentence is imposed where very serious terrorist activity was intended but did not take place than would be imposed where relatively less serious terrorist activity did take place.

Culpability demonstrated by one or more of the following:

A

- **Acting alone**, or in a **leading** role, in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out

B

- **Acting alone**, or in a **leading** role, in terrorist activity where preparations were advanced and, but for apprehension, the activity was likely to have been carried out
- **Significant** role in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
- Offender has coordinated others to take part in terrorist activity, whether in the UK or abroad (where not falling within A)

C

- **Leading** role in terrorist activity where preparations were not far advanced
- **Significant** role in terrorist activity where preparations were advanced and, but for apprehension, the activity was likely to have been carried out
- **Lesser** role in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
- Offender acquires training or skills for purpose of terrorist activity (where not falling within A or B)
- Acts of significant assistance or encouragement of other(s) (where not falling within A or B)

D

- Offender has engaged in very limited preparation for terrorist activity
- Act(s) of lesser assistance or encouragement of other(s)
- Other cases not falling within A, B or C

Harm

Harm is assessed based on the type of harm risked and the likelihood of that harm being caused. When considering the likelihood of harm, the court should consider the viability of any plan.

See the notes for culpability and harm at the start of this section before proceeding

Category 1

- Multiple deaths risked and very likely to be caused

Category 2

- Multiple deaths risked but not very likely to be caused
- Any death risked and very likely to be caused

Category 3

- Any death risked but not very likely to be caused
- Risk of widespread or serious damage to property or economic interests
- Risk of a substantial impact upon civic infrastructure
- Any other cases

Step 2 - Starting point and category range

Having determined the category at step 1, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features.

Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in **all** cases, having regard to the criteria contained in [section 308 of the Sentencing Code](#) to make the appropriate determination. (See Step 6 below).

The court must also consider the provisions set out in [s323\(3\) of the Sentencing Code](#) (minimum term order for serious terrorism offenders). (See Step 3 below).

Where the dangerousness provisions are met but a life sentence is not justified, the court must consider whether the provisions for the imposition of a serious terrorism sentence have been met, having regard to the criteria contained in [s268B](#) (adult offenders aged under 21) or [s282B](#) (offenders aged 21 and over) of the Sentencing Code. If the criteria are met, a minimum custodial sentence of 14 years applies. (see Step 3 below).

Where the dangerousness provisions are not met the court must **impose a sentence in accordance with** the provisions set out in sections [265](#) and [278](#) of the Sentencing Code (required special sentence for certain offenders of particular concern). (See Step 7 below).

Harm	Culpability			
	A	B	C	D
1	Starting point Life imprisonment - minimum term 35 years' custody	Starting point Life imprisonment - minimum term 25 years' custody	Starting point Life imprisonment - minimum term 15 years' custody	Starting point 15 years' custody
	Category range Life imprisonment - minimum term 30 – 40 years' custody	Category range Life imprisonment - minimum term 20 - 30 years' custody	Category range Life imprisonment - minimum term 10 – 20 years' custody*	Category range 10-20 years' custody*
2	Starting point Life imprisonment - minimum term 25 years' custody	Starting point Life imprisonment - minimum term 15 years' custody	Starting point 15 years' custody	Starting point 8 years' custody
	Category range Life imprisonment - minimum term 20 - 30 years' custody	Category range Life imprisonment - minimum term 10- 20 years' custody	Category range 10- 20 years' custody	Category range 6-10 years' custody
3	Starting point 16 years' custody	Starting point 12 years' custody	Starting point 8 years' custody	Starting point 4 years' custody
	Category range 12 – 20 years' custody	Category range 8- 16 years' custody	Category range 6 - 10 years' custody	Category range 3– 6 years' custody

* Where a Serious Terrorism Sentence is imposed, the appropriate custodial term is a minimum of 14 years unless exceptional circumstances apply. See s282C of the Sentencing Code See Step 3 below regarding minimum terms, serious terrorism sentences and exceptional circumstances.

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors

- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection
- Offender attempted to disguise their identity to prevent detection
- Indoctrinated or encouraged others
- Preparation was with a view to engage in combat with UK armed forces
- Conduct in preparation includes the actual or planned commission of other offences, where not taken into account in step one
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed ~~while~~ in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/or lack of maturity ~~where it affects the responsibility of the offender~~
- Sole or primary carer for dependent relatives

Step 3 – Minimum terms, serious terrorism sentences and exceptional circumstances

Life sentence minimum terms

For serious terrorism cases the life sentence minimum term must be **at least 14 years** ([section 323\(3\)](#) of the Sentencing Code) unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify a lesser period.

A “serious terrorism case” is a case where, but for the fact that the court passes a life sentence, the court would be required by section [268B\(2\)](#) or [282B\(2\)](#) of the Sentencing Code to impose a serious terrorism sentence.

The minimum term cannot be reduced below 80 per cent of 14 years for a guilty plea (see step 5 – Reduction for guilty pleas).

Serious terrorism sentence - minimum custodial sentence

Where the criteria for a serious terrorism sentence are met, as set out in [s268B](#) (adult offenders aged under 21) or [s282B](#) (offenders aged 21 and over) of the Sentencing Code, then the court must impose the serious terrorism sentence unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify not doing so.

Where a serious terrorism sentence is imposed, the appropriate custodial term is a minimum of 14 years' custody and an extension period to be served on licence of at least 7 and no more than 25 years. (Sections [268C](#) and [282C](#) of the Sentencing Code). Where a serious terrorism sentence is imposed, the custodial term cannot be reduced below 80 per cent of 14 years for a guilty plea (see step 5 – Reduction for guilty pleas).

Exceptional circumstances

In considering whether there are exceptional circumstances that would justify not imposing the minimum term (in the case of a life sentence), or not imposing the serious terrorism sentence where the other tests are met, the court must have regard to:

- the particular circumstances of the offence **and**
- the particular circumstances of the offender.

either of which may give rise to exceptional circumstances

Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.

Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

The circumstances must truly be exceptional. Circumstances are exceptional if the imposition of the minimum term (in the case of a life sentence), or imposing the serious terrorism sentence would result in an arbitrary and disproportionate sentence.

It is important that courts adhere to the statutory requirement and do not too readily accept exceptional circumstances.

The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

The mere presence of one or more of the following should not *in itself* be regarded as exceptional:

- One or more lower culpability factors
- One or more mitigating factors
- A plea of guilty

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the minimum term (in the case of a life sentence) then the court **must impose a shorter minimum**.

If there are exceptional circumstances that justify not imposing a serious terrorism sentence, then the court must impose an alternative sentence.

Note: a guilty plea reduction applies in the normal way if a serious terrorism sentence is not imposed (see step 5 – Reduction for guilty pleas).

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 5 – Reduction for guilty plea

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Where a **serious terrorism sentence** has been imposed, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than 80 per cent of the statutory minimum.

Step 6 – Dangerousness

The court should consider:

- 1) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#))
- 2) whether having regard to sections [273](#) and [283](#) of the Sentencing Code it would be appropriate to impose a life sentence.
- 3) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

Step 7 – Required special sentence for certain offenders of particular concern

Where the court does not impose a sentence of imprisonment for life, a serious terrorism sentence or an extended sentence but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

Step 8 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 9 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Crown Court Compendium](#)

Step 10 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 11 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Proscribed Organisations- Membership

Terrorism Act 2000 (section 11)

Triable either way

Maximum: 10 years' custody

Offence range: High level community order – 9 years' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

This is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

~~This guideline applies only to offenders aged 18 and older~~

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Applicability [drop down]

STEP ONE Determining the offence category	
<p>The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category, the court should assess culpability and harm.</p> <p>The court should weigh all the factors set out below in determining the offender's culpability.</p> <p>Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.</p>	
Culpability demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> Prominent member of organisation
B	<ul style="list-style-type: none"> Active (but not prominent) member of organisation
C	<ul style="list-style-type: none"> All other cases

Harm
<p>There is no variation in the level of harm caused. Membership of any organisation which is concerned in terrorism either through the commission, participation, preparation, promotion or encouragement of terrorism is inherently harmful.</p>

STEP TWO Starting point and category range
<p>Having determined the category at step 1, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.</p>

Culpability	A	B	C
	<p>Starting point 10 years' custody</p> <p>Category range 8 - 13 years' custody</p>	<p>Starting point 7 years' custody</p> <p>Category range 5-9 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range High level community order - 4 years' custody</p>

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some

cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Length of time over which offending was committed
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- Unaware that organisation was proscribed
- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity ~~where it affects the responsibility of the offender~~
- Sole or primary carer for dependent relatives

Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Required special sentence for certain offenders of particular concern

Where the court does not impose a sentence of imprisonment for life, a serious terrorism sentence or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

Step 6 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 7 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 9 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Proscribed organisations - support

Terrorism Act 2000 (section 12)

Triable either way
Maximum: 10 years' custody

Offence range: High level community order – 9 years' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

This is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

~~This guideline applies only to offenders aged 18 and older~~

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Applicability [drop down]

Step 1 – Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A

- Intentional offence - Offender in position of trust, authority or influence and abuses their position
- Persistent efforts to gain widespread or significant support for organisation
- Encourages activities intended to cause endangerment to life

B

- Reckless offence - Offender in position of trust, authority or influence and abuses their position
- Arranged or played a significant part in the arrangement of a meeting/event aimed at gaining significant support for organisation
- Intended to gain widespread or significant support for organisation
- Encourages activities intended to cause widespread or serious damage to property, or economic interests or substantial impact upon civic infrastructure

C

- Lesser cases where characteristics for categories A or B are not present
- Other reckless offences

Harm

The court should consider the factors set out below to determine the level of harm.

Category 1

- Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life
- Significant support for the organisation gained or likely to be gained

Category 2

- Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life

Category 3

- All other cases

Step 2 - Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

	A	B	C
1	Starting point 10 years' custody Category range 8-13 years' custody	Starting point 7 years' custody Category range 5-9 years' custody	Starting point 3 years' custody Category range 2- 45 years' custody
2	Starting point 8 years' custody Category range 6-9 years' custody	Starting point 4 years' custody Category range 3 - 67 years' custody	Starting point 2 years' custody Category range 1-3 years' custody
3	Starting point 6 years' custody Category range 4-7 years' custody	Starting point 3 years' custody Category range 2-4 years' custody	Starting point 1 years' custody Category range High level community order – 2 years' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Used multiple social media platforms to reach a wider audience (where not taken into account at Step 1)
- Offender has terrorist connections and/ or motivations
- Vulnerable/impressionable audience
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offence committed ~~while~~ in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions ~~or~~ no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender has no terrorist connections and/ or motivations
- Unaware that organisation was proscribed
- Clear evidence of a change of mind set prior to arrest
- Offender involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/or lack of maturity ~~where it affects the responsibility of the offender~~
- Sole or primary carer for dependent relatives

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty plea

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Dangerousness

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

Step 6 – Required special sentence for certain offenders of particular concern

Where the court does not impose a sentence of imprisonment for life, a serious terrorism sentence or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

Step 7 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 8 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Step 9 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 10 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Collection of Terrorist Information

Terrorism Act 2000 (section 58)

Triable either way
Maximum: 15 years' custody

Offence range: High level community order - 14 years' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

This is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

This guideline applies only to offenders aged 18 and older
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STEP ONE Determining the offence category	
<p>The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category, the court should assess culpability and harm.</p> <p>The court should weigh all the factors set out below in determining the offender's culpability.</p> <p>Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.</p>	
Culpability demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> Offender collected, made a record of, was in possession of, or viewed or otherwise accessed over the internet, information for use in a specific terrorist act
B	<ul style="list-style-type: none"> Offender collected, made a record of, was in possession of, or viewed or otherwise accessed over the internet, information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations
C	<ul style="list-style-type: none"> Offender collected, made a record of, was in possession of, or viewed or otherwise accessed over the internet, information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations

Harm	
Category 1	<ul style="list-style-type: none"> Material provides instruction for specific terrorist activity endangering life and harm is very likely to be caused
Category 2	<ul style="list-style-type: none"> Material provides instruction for specific terrorist activity endangering life but harm is not very likely to be caused Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure
Category 3	<ul style="list-style-type: none"> All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 3 years' custody
	Category range 8-14 years' custody	Category range 5-9 years' custody	Category range 1-5 years' custody
Category 2	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 1 year 6 months' custody
	Category range 5-9 years' custody	Category range 3 – 5 years' custody	Category range 6 months – 3 years' custody
Category 3	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 2 – 5 years' custody	Category range High level community order – 2 years' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness**Statutory aggravating factors:**

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Significant volume of terrorist publications
- Length of time over which offending was committed
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty plea

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Dangerousness

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

Step 6 – Required special sentence for certain offenders of particular concern

Where the court does not impose a sentence of imprisonment for life, a serious terrorism sentence or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

Step 7 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 8 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Crown Court Compendium](#)

Step 9 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 10 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Funding Terrorism

Fundraising

Terrorism Act 2000 (section 15)

Use and Possession

Terrorism Act 2000 (section 16)

Funding Arrangements

Terrorism Act 2000 (section 17)

Money Laundering

Terrorism Act 2000 (section 18)

Triable either way

Maximum: 14 years' custody

Offence range: High level community order - 13 years' custody

These are offences listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

This guideline applies only to offenders aged 18 and older

STEP ONE Determining the offence category	
<p>The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category, the court should assess culpability and harm.</p> <p>The court should weigh all the factors set out below in determining the offender's culpability.</p> <p>Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.</p>	
Culpability demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> • A significant role where offending is part of a group activity • Involvement of others through pressure or influence • Abuse of position of power, trust or responsibility • Sophisticated nature of offence/significant planning • Activities took place over a sustained period of time
B	<ul style="list-style-type: none"> • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> - Factors are present in A and C which balance each other out and/ or - The offender's culpability falls between the factors as described in A and C
C	<ul style="list-style-type: none"> • Performed limited function under direction • Very little or no planning

Harm	
The court should consider the factors set out below to determine the level of harm.	
Category 1	<ul style="list-style-type: none"> • Money or property made, or was likely to make, a significant contribution to furthering terrorism • Use or provision of money or property to fund or assist activities endangering life
Category 2	<ul style="list-style-type: none"> • Use or provision of money or property to fund or assist activities which involve a risk of widespread or serious damage to property, or economic interests or substantial impact upon civic infrastructure • All other cases whose characteristics fall between 1 and 3
Category 3	<ul style="list-style-type: none"> • Money or property made, or was likely to make, a minor contribution to furthering terrorism

STEP TWO			
Starting point and category range			
Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.			
Harm	Culpability		
	A	B	C
Category 1	Starting point 12 years' custody Category range 10 - 13 years' custody	Starting point 9 years' custody Category range 8 – 10 years' custody	Starting point 7 years' custody Category range 6 – 8 years' custody
Category 2	Starting point 9 years' custody Category range 8 – 10 years' custody	Starting point 7 years' custody Category range 6 – 8 years' custody	Starting point 4 years' custody Category range 2 – 5 years' custody
Category 3	Starting point 7 years' custody Category range 6 – 8 years' custody	Starting point 4 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range High level community order – 3 years' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Knowledge that the money or property will or may be used for the purposes of terrorism

- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Indoctrinated or encouraged others
- Use or provision of false or fraudulent identification
- Misrepresenting nature of organisation
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision

Factors reducing seriousness or reflecting personal mitigation

- Offender did not know or reasonably suspect that the money or property will or may be used for the purposes of terrorism
- No previous convictions **or** no relevant/recent convictions
- Good character and/ or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity ~~where it affects the responsibility of the offender~~
- Sole or primary carer for dependent relatives

Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Required special sentence for certain offenders of particular concern

Where the court does not impose a sentence of imprisonment for life, a serious terrorism sentence or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for

which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

Step 6 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 7 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 9 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Failure to Disclose Information about Acts of Terrorism

Terrorism Act 2000 (section 38B)

Triable either way

Maximum: 10 years' custody

Offence range: High level community order – 9 years' custody

This is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

This guideline applies only to offenders aged 18 and older

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Culpability demonstrated by one or more of the following:

A	<ul style="list-style-type: none"> Information was very significant (including, but not limited to, information which could have prevented an act of terrorism)
B	<ul style="list-style-type: none"> Cases whose characteristics fall between A and C
C	<ul style="list-style-type: none"> Information was of low significance

Harm

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

Category 1	<ul style="list-style-type: none"> Information related to terrorist activity endangering life Information related to terrorist activity intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure
Category 2	<ul style="list-style-type: none"> All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody Category range 6-9 years' custody	Starting point 5 years' custody Category range 4-6 years' custody	Starting point 2 years' custody Category range 6 months - 3 years' custody

Category 2	Starting point 4 years' custody Category range 3-5 years' custody	Starting point 2 years' custody Category range 6 months – 3 years' custody	Starting point 1 year 6 months' custody Category range High level community order – 2 years' custody
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The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Many lives endangered
- Lengthy of time over which offending was committed
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/ or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Offender discloses information but not as soon as was reasonably practicable
- Offender's responsibility substantially reduced by mental disorder or learning disability

- Age and/ or lack of maturity ~~where it affects the responsibility of the offender~~
- Sole or primary carer for dependent relatives

Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Required special sentence for certain offenders of particular concern

Where the court does not impose a sentence of imprisonment for life, a serious terrorism sentence or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

Step 6 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 7 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 9 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Collection of Terrorist Information

Terrorism Act 2000 (section 58)

Triable either way
Maximum: 15 years' custody

Offence range: High level community order - 14 years' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

This is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

This guideline applies only to offenders aged 18 and older
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STEP ONE Determining the offence category	
<p>The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category, the court should assess culpability and harm.</p> <p>The court should weigh all the factors set out below in determining the offender's culpability.</p> <p>Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.</p>	
Culpability demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> Offender collected, made a record of, was in possession of, or viewed or otherwise accessed over the internet, information for use in a specific terrorist act
B	<ul style="list-style-type: none"> Offender collected, made a record of, was in possession of, or viewed or otherwise accessed over the internet, information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations
C	<ul style="list-style-type: none"> Offender collected, made a record of, was in possession of, or viewed or otherwise accessed over the internet, information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations

Harm	
Category 1	<ul style="list-style-type: none"> Material provides instruction for specific terrorist activity endangering life and harm is very likely to be caused
Category 2	<ul style="list-style-type: none"> Material provides instruction for specific terrorist activity endangering life but harm is not very likely to be caused Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure
Category 3	<ul style="list-style-type: none"> All other cases

STEP TWO**Starting point and category range**

Having determined the category at step 1, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
Category 1	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 3 years' custody
	Category range 8-14 years' custody	Category range 5-9 years' custody	Category range 1-5 years' custody
Category 2	Starting point 7 years' custody	Starting point 4 years' custody	Starting point 1 year 6 months' custody
	Category range 5-9 years' custody	Category range 3 – 5 years' custody	Category range 6 months – 3 years' custody
Category 3	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 2 – 5 years' custody	Category range High level community order – 2 years' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness**Statutory aggravating factors:**

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Significant volume of terrorist publications
- Length of time over which offending was committed
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Dangerousness

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

Step 6 – Required special sentence for certain offenders of particular concern

Where the court does not impose a sentence of imprisonment for life, a serious terrorism sentence or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

Step 7 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 8 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

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Step 9 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 10 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).